IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1173 of 2002
in
SPECIAL CIVIL APPLICATION No 8736 of 2002

with

CIVIL APPLICATION No 9439 of 2002

with

LETTERS PATENT APPEAL No 1130 of 2002
in
SPECIAL CIVIL APPLICATION No 8736 of 2002

with

CIVIL APPLICATION No 8914 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ANITA BHANDARI

Versus

UNION OF INDIA

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Appearance:

1. LETTERS PATENT APPEAL No. 1173 of 2002

MR PARITOSH CALLA for Appellant No.

SERVED BY RPAD - (R) for Respondent No. 1

MR PRASHANT G DESAI for Respondent No. 2-4

2. LETTERS PATENT APPEAL No. 1130 of 2002

MR PRASHANT G DESAI for Appellant No.

MR PARITOSH CALLA for Respondent No. 1

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CORAM : MR.JUSTICE B.J.SHETHNA

and

MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 16/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

#. Both these appeals and Civil Applications filed in it are disposed of by this common judgment as they are arising out of the judgment and order dated 28.10.2002 passed by the learned Single Judge of this court (Coram : M.S.Shah, J.) in Special Civil Application No.8736 of 2002.

#. As per the FIR lodged by Shri Mahendrabhai Kothawala on 4.4.2001 at about 1.45 p.m. Shri Sureshbhai Bhandari came on his scooter and parked it near Dena Bank, situated at Reshamwala Market, Surat. At that time, Shri Nagjibhai, Watchman of the bank requested him to park his scooter on the other side as it was causing obstruction in carrying cash box. Thereupon, Sureshbhai got angry and abused Shri Nagjibhai by his father. Nagjibhai told him not to abuse him as he is watchman of the Bank. Heated exchange of words took place between them, when they were going inside the bank. Nagjibhai was following Sureshbhai. That time he heard loud noise. He went inside and saw Sureshbhai lying profusely bleeding, having bullet injury on his right shoulder. Nagjibhai was standing there with his gun. Sureshbhai succumbed to his injuries. Thereupon, FIR was lodged by him before the police wherein it is stated that on account of quarrel between Nagjibhai and Sureshbhai (deceased) regarding parking of a scooter the incident in question had happened. After completing the investigation, the police filed charge sheet dated 15.5.2001 against

Nagjibhai for the offences under section 302 IPC and under Section 30 of the Arms Act for committing murder of Sureshbhai Bhandari.

#. Mrs.Anita Bhandari, widow of Sureshbhai Bhandari on her behalf and on behalf of her two minor children, Ajayesh and Neha, aged 9 and 2 respectively approached this court by way of Special Civil Application No.8736 of 2002 and prayed that the respondents be directed to pay a sum of Rs.1,08,00,000/= (Rupees One Crore Eight Lakhs, only) with interest @12% p.a. with effect from the date of the death of her husband i.e. 4.4.2001 till realisation and also to direct respondents to appoint the petitioner No.1-Mrs.Anita Bhandari in Dena Bank at Jodhpur on a suitable job commensurate with her qualification. On behalf of respondent Nos.2, 3 and 4-Dena Bank reply affidavit was filed opposing the petition.

#. When the above petition was placed for admission before the learned Single Judge of this court (Coram : M.S.Shah, J.) on 28.10.2002 rule was issued and Ms.Davawala, learned Additional Standing Counsel for the Union of India and Shri Prashant Desai, learned counsel for the respondent-Bank waived service of rule. After hearing learned counsel for the parties, the learned Single Judge partly allowed the petition and granted the following reliefs :-

"I(i) The respondent-bank shall deposit in the petitioners' account with the respondent-bank at its Jodhpur branch a sum of Rs.8,00,000/= (Rupees Eight lacs only), by 15.12.2002, out of which petitioner No.1 shall be permitted to withdraw a sum of Rs.50,000/= for the purpose of instituting a civil suit in a competent court for claiming compensation from the respondents.

(ii) The balance amount of Rs.7,50,000/= shall remain invested in a fixed deposit account in the name of the petitioners herein with the Jodhpur branch of the respondent-bank for a period of three years and petitioner No.1 shall be permitted to withdraw monthly/quarterly interest as per the choice of petitioner No.1 to maintain the family.

(iii) The amount of Rs.7,50,000/= to be

deposited by the respondent-bank in a fixed deposit account in the name of the petitioners shall be adjusted against the amount which may ultimately be decreed by the Civil Court as the principal amount of compensation. The additional amount of Rs.50,000/= to be deposited by the respondent bank for expenses of litigation shall be adjusted against the costs which may be awarded by the Civil Court.

II If the petitioners file a civil suit for compensation by 31.12.2002, the trial court shall hear and decide such suit as expeditiously as possible and in any case by 31.12.2003. The time limit is peremptory and the trial court shall comply with the provisions of the Civil Procedure Code as amended by the 1999 and 2002 Amendment Acts for expeditious trial and report compliance to this Court keeping in mind the observations made in para 12 of this judgment.

III If at all respondents reconsider the matter and are inclined to accept the petitioners' request for compassionate appointment, this judgment shall not come in the way of the parties arriving at any settlement as may be acceptable to the parties."

#. Aggrieved of the aforesaid reliefs granted in favour of the petitioners, appellant-Dena Bank filed Letters Patent Appeal No.1130 of 2002 with Civil Application No.8914 of 2002 for interim relief.

#. The original petitioners-Anita Bhandari and her minor children aggrieved of the part of the judgment and order by which full compensation not given and appointment on compassionate ground not given to petitioner No.1 herein they filed Letters Patent Appeal No.1173 of 2002 with Civil Application No.9439 of 2002.

#. Learned counsel Mr.Desai for the appellant bank vehemently submitted that it was not open to the learned Single Judge to entertain the writ petition, which requires appreciation of evidence. He submitted that the

learned Single Judge has appreciated the evidence and partly allowed the petition on surmises and conjectures, which is not permissible under the law. He also submitted that without impleading watchman-Nagjibhai of the respondent-bank the petition could not to have been entertained. Mr.Desai submitted that only remedy available to the original petitioners was to approach the Civil Court by way of civil suit. His alternative submission was that even for the sake of argument that the incident in question took place as stated in the FIR then also bank would not be responsible for the act of its watchman. He also submitted that purely on humanitarian ground the bank was inclined to consider appointment of the petitioner No.1-Anita, widow of deceased-Sureshbhai, but in absence of the policy and sanction from Union of India it was not possible for them to provide employment to petitioner No.1.

#. Learned counsel Mr.Calla for the appellants of Letters Patent Appeal No.1173 of 2002-original petitioners vehemently submitted that in such type of cases there was no need for the appellants-petitioners to approach civil court by way of civil suit and when the income of deceased-Sureshbhai is not in dispute then this court in its extra-ordinary jurisdiction under Article 226 of the Constitution of India can always entertain the petition and award compensation. In support of his contention, he has placed reliance on the following Hon'ble Supreme Court cases :-

(1) 2000(2) SCC 465
(2) 1989 SC 1607
(3) 2001(8) SCC 151
(4) 1983(4) SC 141

He has also placed reliance on the Division Bench judgment of this court delivered by M.R.Calla, J. (as he then was) reported in 2001(3) GLR 2056. He also submitted that though there was no scheme framed by the respondent bank to provide appointment on compassionate ground, bank should have appointed the petitioner No.1 on compassionate ground. He submitted that, that part of the order passed by the learned Single Judge denying appointment on compassionate ground is required to be quashed and set aside. He also submitted that instead of partly allowing the petition and awarding only Rs.8,00,000/=, the learned Single Judge ought to have fully allowed the petition in toto and awarded Rs.1,08,00,000/= as claimed in the petition because the deceased-Sureshbhai was earning more than Rs.2,00,000/= p.a. and at the time of his death he was only 34 years

old, therefore, claim of Rs.1,08,00,000/= was just and reasonable and they should not have been relegated to the remedy of civil suit before the civil court for rest of their claim.

#. Having heard learned counsel for the parties at great length, we are of the considered opinion that there is lot of substance in the submission made by Mr.Desai for the appellant-Dena Bank that without impleading Nagjibhai, Watchman of the bank, no relief could have been granted by the learned Single Judge in favour of the original petitioners. FIR dated 4.4.2001 lodged by Mahendrabhai Haribhai Kothawala is at page 14 of the compilation. He is a auto-rickshaw driver, aged 50 years. He has stated in his FIR lodged before the police that Dena Bank is situated near Patidar Bhavan and its employees often come in his rickshaw. He was taking them for either depositing or withdrawing cash from the branch of Dena Bank, situated at Reshamwala Market, Surat. He was knowing Nagjibhai, Watchman of the bank, since last many years. On the date of the incident in the morning he was standing near Patidar Bhavan as usual. At that time at about 1 O' clock in the afternoon Nagjibhai came and asked him to go to bank in rickshaw. Thereupon, they went in auto rickshaw to the bank. From there Surti saheb of Dena Bank along with Machibhai, Peon and others came to Dena Bank situated at Reshamwala Market. Nagjibhai was armed with gun. Reaching Reshamwala Market, Surti saheb and Malabhai went in the bank and he and Nagjibhai were sitting in his rickshaw. At about 1.45 p.m. one person (Sureshbhai) came on his scooter and while he was parking his scooter, Nagjibhai asked him to park his scooter on other side as it would cause obstruction while passing. On his saying so, Sureshbhai got angry and asked Nagjibhai, is this place belong to your father? Nagjibhai told him not to abuse as he was employee of the bank. Thereupon, Sureshbhai told him to come along with him to see the Manager of the bank. There was hot exchange of words took between them and when Sureshbhai was going inside the bank through gate at that time Nagjibhai followed him with the gun. He heard a loud sound. Therefore, he went inside and saw Sureshbhai lying on the floor profusely bleeding from his right shoulder and Nagjibhai was standing with his gun. He lodged his FIR before the police about the incident which took place due to parking of scooter.

##. We must state that the trial before the competent criminal court has not at all started. In a criminal trial Nagjibhai has right not to speak and defend his case and plead that he was absolutely innocent and not

guilty. It is well settled principle of law that one cannot be condemned unheard. In our considered opinion, without impleading Nagjibhai, Watchman as one of the party respondent, no relief could have been granted in favour of the petitioner by the learned Single Judge of this court.

##. Having carefully gone through the judgment and order passed by the learned Single Judge, it appears that the learned Single Judge has proceeded with the matter as if he was trying the case. He has appreciated the evidence in form of FIR lodged by auto-rickshaw wala before the police, which is highly improper.

##. In para 6 of his judgment, the learned single Judge has observed that "Suffice it to state that for the purpose of entering the bank premises the deceased was parking his scooter in front of the bank. At that point of time, it appears that the cash box of the bank was being brought into the bank premises and the security guard of the bank objected to the deceased parking the scooter in front of the bank. However, though the deceased had not made any attempt to assault the security guard nor had the deceased made any attempt even to touch the cash box or the vehicle carrying the cash box, the security guard shot at the deceased. The act of the security guard would have to be prima facie held to be rash and reckless".

##. It is unfortunate that the learned Single Judge proceeded on the basis as if the wrong committed by the Watchman, Nagjibhai is proved and that too without hearing Nagjibhai, which is in clear violation of principles of natural justice. In our considered opinion it was too early for any one to jump to such conclusion. The learned Single Judge has also observed in para 9 of his judgment that "It is thus clear that even when the wrong of the employee is doing the act in question under circumstances in which it ought not to have been done is also a wrong for which the master is responsible. The bank has to be held answerable for the wrong of the security guard in doing the unlawful act under circumstances in which it ought not to have been done". In our opinion it is too early to come to such conclusion.

##. Similarly, the learned Single Judge has committed grave error in para 9 of his judgment while observing that "the facts in the instant case are, however, very clear that the incident in question took place when the cash box was being brought into the bank premises and the deceased was also entering the bank premises after

parking his scooter. If the security guard committed an error in perceiving the act of deceased as a threat to the cash box or the wrong parking of the scooter as an impediment of protection of the property of the bank from a possible danger from any third party, the act of the security guard causing death of the deceased was in the course of the employment of the security guard and, therefore, it is not possible to accept the defence pleaded by the bank that it is not vicariously liable".

##. We have refrained ourselves from dealing with judgments cited by both the learned counsel for the parties, because none of the judgments cited by the learned counsel for the parties are applicable on the peculiar facts of this case. On facts of this case, which we have narrated hereinabove in nutshell, we are of the clear opinion that the learned Single Judge should not have exercised his extraordinary jurisdiction under Article 226 of the Constitution of India.

##. In view of the above discussion, the appeal filed by the bank was required to be allowed and appeal filed by the original petitioners was required to be dismissed.

##. We are exercising our jurisdiction in Letters Patent and considering the plight of poor widow and her minor children, we do not want to interfere with the order passed by the learned Single Judge awarding interim compensation. In case of Surajmal Chhajer v. State and ors. reported in AIR 1999 Rajasthan 82, Division Bench of Rajasthan High Court held that the petitioner, who was the father of the deceased was entitled to interim compensation from the State Government and the Hon'ble Supreme Court dismissed Special Leave Petition filed against that judgment as stated at the Bar by Mr.Calla.

##. We must state that looking to the pathetic condition of poor widow and her minor children, learned counsel Mr.Desai for the appellant-Bank has also not seriously challenged the interim compensation awarded by the learned Single Judge. We make it clear that the amount, which is awarded by the learned Single Judge to the original petitioners, shall not be recoverable from them irrespective of the result of the suit filed by them before the civil court. Accordingly, both these Appeals and Civil Applications filed in the Appeals are dismissed with no order as to costs.

(B.J.Shethna, J.)

(Akshay H. Mehta, J.)

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